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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

* * * * *

In re:)	CASE NO. BK-21-50147-BTB
)	Chapter 13
JASON PHILIP POWELL,)	
)	MOTION FOR VOLUNTARY DISMISSAL
Debtor.)	OF CHAPTER 13 CASE
)	(11 U.S.C. § 1307(b))
)	

COMES NOW Jason Philip Powell (hereinafter "Debtor"), by and through his attorney, Michael G. Millward, Esq., of Millward Law, Ltd., and submits his *Motion for Voluntary Dismissal of Chapter 13 Case*.

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to LR 9014.1, the court will consider this motion, objection, or other matter without further notice of hearing unless a party in interest files an objection within twenty-one (21) days from the date of service of this paper.

If you object to the relief requested in this paper, you may file your objection at the bankruptcy clerk's office located in Las Vegas at the United States Bankruptcy Court, 300 Las Vegas Blvd. South, Las Vegas, Nevada 89101, or in Reno at the United States Bankruptcy Court, 300 Booth Street, Reno, NV 89509, and serve a copy on the movant's attorney and any other appropriate persons.

It is the duty of the objecting party to timely set the objection for a hearing and properly notice all parties in interest. If you do not file an objection within the time permitted, an order granting the requested relief may be entered by the court without further notice or hearing.

1 This Motion is based upon the following Memorandum of Points and Authorities, 11
2 U.S.C. § 1307(b), and the papers on file herein.

3 DATED this 2nd day of September, 2021.

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5 By: /s/ Michael G. Millward
6 MICHAEL G. MILLWARD, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Debtor Jason Philip Powell has determined that it is in his best interests to voluntarily dismiss his Chapter 13 bankruptcy case pursuant to 11 U.S.C. §§ 1307(b). Pursuant to Section 1307(b), a debtor is entitled to an order dismissing a Chapter 13 bankruptcy so long as the case has not been converted to a Chapter 7 or Chapter 11 case.

Accordingly, the Debtor respectfully requests that this honorable Court forthwith enter an order dismissing this Bankruptcy matter in its entirety.

II. ARGUMENT & APPLICABLE LAW

Section 1307(b) provides that “[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter.”

In the decision by the Ninth Circuit Court of Appeals opinion in the case *In re Nichols*, case no. 20-60043, BAP no. 20-1032, concerning an appeal from the Bankruptcy Appellate Panel, the Circuit Court of Appeals reversed the federal bankruptcy court’s decision denying a Chapter 13 debtor’s motion for voluntary dismissal and holding that the prior binding precedent, *In re Rosson*, 656 F.3d 764 (9th Cir.2008), had been effectively overruled, and that based upon the plain and unambiguous language of 11 U.S.C. § 1307(b), even where there are allegations which would otherwise constitute a bad faith filing or an abuse of the bankruptcy process exists, the statute “plainly requires the bankruptcy court to dismiss the case upon the debtor’s request.” *In re Nichols*, Case no. 20-60043, p.13 (9th Cir.2021).¹

Here, Mr. Powell seeks the voluntary dismissal of his Chapter 13 bankruptcy case pursuant to 11 U.S.C. § 1307(b). Mr. Powell’s case has not been converted to another case under section 706, 1112, or 1208.

¹ The Ninth Circuit Court of Appeals decision *In re Nichols* is attached hereto as Exhibit 1, and is available via the Bankruptcy Pacer Service and the at the Ninth Circuit Court of Appeals website at the following web address: <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/09/01/20-60043.pdf>

1 Based upon the Ninth Circuit's decision in *Nichols*, the Court should conclude that Mr.
2 Powell has an absolute right to dismiss his case pursuant to the plain and unambiguous
3 provisions of 11 U.S.C. § 1307(b).

4 **VII. CONCLUSION**

5 Accordingly, the Debtor respectfully requests the entry of an order forthwith
6 dismissing the Chapter 13 case in its entirety.

7 DATED this 2nd day of September, 2021.

8
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INDEX TO EXHIBITS

Exhibit 1 *In re Nichols*, Ninth Circuit Court of Appeals, Case No. 17 pages
20-60043, BAP no. 20-1032 (September 1, 2021).